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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF AGNEW LUMBER )  
COMPANY, )

Appellant, )

vs. )

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )

Respondent. )  
\_\_\_\_\_ )

PCHB No. 12

FINDINGS OF FACT, CONCLUSIONS  
AND ORDER

This is an appeal of civil penalties totaling \$300 levied by respondent, State of Washington Department of Ecology, against appellant, Agnew Lumber Company, for alleged violation of RCW 90.48.080, specifically for causing of excessive turbidity in the Skookumchuck River, downstream from appellant's property in Lewis County on August 15, 16 and 17, 1970.

This matter originally came on for hearing February 5, 1971, in the Capitol Center Building hearing room in Olympia, Washington, before the Pollution Control Hearings Board (Walt Woodward, hearing officer), and was the subject of a second hearing for additional testimony in the same room on April 16, 1971 (same hearing officer, but with James Sheehy, another member of the Hearings Board also in attendance).

The appellant was represented in the first hearing by its attorney, J. M. Cunningham, and in the second hearing by Attorneys J. M. Cunningham and Dan Agnew. The respondent appeared at both hearings through Wick Dufford, assistant attorney general.

At the first hearing, witnesses on behalf of respondent and appellant were sworn and testified, and exhibits were admitted. Counsel for both appellant and respondent submitted briefs. At the second hearing, held on motion of the Hearings Board, witnesses of the Departments of Fisheries and Game and of the appellant were sworn and testified. Counsel for respondent filed an additional brief.

On the basis of testimony and exhibits, the Pollution Control Hearings Board makes the following

FINDINGS OF FACT

I.

In 1896, a predecessor firm to Agnew Lumber Company erected a dam across the Skookumchuck River in Lewis County in order to create a millpond. In 1969, the Department of Fisheries removed the dam by agreement with appellant. Details of the agreement, set forth in appellant's Exhibit 4, also granted appellant permission to remove gravel from the stream bed. In 1970, appellant, doing stream channelization, was directed by respondent (respondent's Exhibit B) to construct a dike on the river's left bank to separate the Agnew work area from the river. Departments of Fisheries and Game (respondent's Exhibit C) also approved establishment of the dike.

II.

Waters of the Skookumchuck River have been established by regulations of the respondent department to be Class A, limited to not more than five Jackson Turbidity Units (JTUs) over natural conditions. Violation of this criterion is subject to a civil

penalty levied by respondent department of \$100 for each day (RCW 90.48.080).

### III.

Respondent's Exhibit B called appellant's attention to this water quality standard, and respondent's Exhibit C called for observance by appellant of this standard and specifically declared that "sediment, dirt, water contaminating materials, etc., are not to enter the flowing stream."

### IV.

A dike on the left bank of the river was built in the summer of 1970 by appellant in accordance with the terms of respondent's Exhibits B and C. Some time after the end of the Agnew work day on Friday, August 14, 1970, a portion of the dike failed. On August 15, 16 and 17, 1970, turbidity, far in excess of the allowable five JTUs, was observed by an official of respondent department in the Skookumchuck River downstream from this dike break.

### V.

Appellant contends an oral understanding between appellant and representatives of the Department of Fisheries augments and broadens the written agreements set forth in appellant's Exhibit 4 and respondent's Exhibits B and C, but a second hearing for the purpose of inquiring directly into this contention did not produce corroboration of appellant's claim.

From the foregoing Findings of Fact and from a consideration

of the briefs submitted, the Pollution Control Hearings Board draws the following

### CONCLUSIONS

#### I.

Failure of the dike, which caused the instant violations and civil penalties, was the responsibility of the Agnew Lumber Company.

#### II.

The Department of Fisheries' agreement to "hold Agnew harmless arising out of activities authorized" (appellant's Exhibit 4), clearly cannot be taken to mean a waiver of the state's water quality standards; to the contrary, that agreement and other exhibits in this matter pointedly warned appellant not to violate water standard regulations.

#### III.

Even though this Hearings Board, on its own motion, convened a second hearing for direct testimony by representatives of the Department of Fisheries, corroboration was not obtained of appellant's contention that an oral understanding between appellant and representatives of the Department of Fisheries relaxed turbidity restrictions for appellant's channelization work beyond that contained in written exhibits.

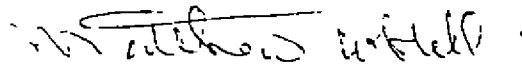
#### IV.

The Department of Ecology fulfilled its statutory obligations in citing the violations and levying the penalties.

Upon these Findings of Fact and Conclusions, the Pollution Control Hearings Board affirms the penalties imposed for excessive turbidity in the Skookunchuck River on August 15, 16 and 17, 1970.

DONE at Olympia, Washington this 29th day of June, 1971.


POLLUTION CONTROL HEARINGS BOARD



Matthew W. Hill, Chairman



James T. Sheehy, Member



Walt Woodward, Member